7-10-2020

Ruby Tuesday ORDER ON PETITIONER'S MOTION FOR PROTECTIVE ORDER

John J. Goger

IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA

RUBY TUESDAY, INC., Plaintiff/Petitioner, v. CEDE & CO., QUADRE INVESTMENTS, LLP, LAWRENCE N. LEBOW, JONATHAN LEBOW, MIRIAM D. ROTH, POWELL ANDERSON CAPITAL LP, and LELAND WYKOFF, Defendants/Respondents.	CIVIL ACTION NO. 2018CV304101 Business Case Div. 4

ORDER ON PETITIONER'S MOTION FOR PROTECTIVE ORDER

The above styled action is before the Court on *Petitioner [Ruby Tuesday, Inc.]'s O.C.G.A. §9-11-26(c) Motion for a Protective Order to Stop Quadre Investments LP from Taking NRD Investor Depositions* ("Motion"). Having considered the entire record, the Court finds as follows:

I. Applicable Standard

With respect to the general scope of discovery, O.C.G.A. §9-11-26(b)(1) provides:

> **Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action**, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. **It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence…**

(Emphasis added).

"[I]n the discovery context, courts should and ordinarily do interpret 'relevant' very broadly to mean any matter that is relevant to anything that is or may become an issue in litigation." Bowden v. The Med. Ctr., Inc., 297 Ga. 285, 291, 773 S.E.2d 692, 696 (2015) (quoting Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978)) (internal punctuation omitted). *See* DeLoitte Haskins & Sells v. Green, 187 Ga. App. 376, 376, 370 S.E.2d 194, 195 (1988) ("The courts of this State have long recognized the overriding policy of liberally construing the application of the discovery law. To hold otherwise would be to give every litigant an effective veto of his adversaries' attempts at discovery") (citation and internal punctuation omitted).

However, the Court must "balance[] the right of a party to obtain discovery and the right of individuals to be protected from unduly burdensome or oppressive inquiries." In re Callaway, 212 Ga. App. 500, 501, 442 S.E.2d 309, 310 (1994). In this regard O.C.G.A. §9-11-26(c) generally governs the entry of protective orders and authorizes courts to "make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." O.C.G.A. §9-11-26(c). "The issuance of a protective order is a recognition of the fact that in some circumstances the interest in gathering information must yield to the interest in protecting a party." Bd. of Regents of Univ. Sys. of Georgia v. Ambati, 299 Ga. App. 804, 811, 685 S.E.2d 719, 726 (2009) (citation omitted).

Nevertheless, protective orders should not be used as a means to hinder legitimate discovery and the burden is on the movant to show "good cause" for its entry. O.C.G.A. §9-11-26(c). As summarized by the Court of Appeals of Georgia in Caldwell v. Church, 341 Ga. App. 852, 802 S.E.2d 835 (2017):

> "O.C.G.A. § 9-11-26(c) does establish a general statutory basis for the entry of protective orders limiting or curtailing discovery under appropriate circumstances, provided such limitations do not have the effect of frustrating and preventing legitimate discovery." Christopher v. State of Ga., 185 Ga. App. 532, 533, 364 S.E.2d 905 (1988) (citation and punctuation omitted). Such protective orders, which are within the discretion of the trial judge, "are intended to be protective—not prohibitive—and, **until such time as the court is satisfied by substantial evidence that bad faith or harassment motivates the discoveror's** [sic] **action, the court should not intervene to limit or prohibit the scope of pretrial discovery**." Bullard v. Ewing, 158 Ga. App. 287, 291, 279 S.E.2d 737 (1981)

Caldwell, 341 Ga. App. at 861 (no error in denying protective orders where movants failed to show that bad faith or harassment motivated the party seeking certain depositions or what specific prejudice might result from the depositions) (emphasis added). *See* Galbreath v. Braley, 318 Ga. App. 111, 113, 733 S.E.2d 412, 414 (2012) ("[P]rotective orders should not be awarded 'when the effect is to frustrate and prevent legitimate discovery'") (citing Intl. Svc. Ins. Co. v. Bowen, 130 Ga. App. 140, 144, 202 S.E.2d 540 (1973)); Young v. Jones, 149 Ga. App. 819, 824, 256 S.E.2d 58, 62 (1979) ("Good cause for the issuance of a protective order designed to frustrate discovery must be clearly demonstrated").

In the instant Motion Petitioner Ruby Tuesday, Inc. ("RTI") asks the Court to enter a protective order to "stop Respondent Quadre Investment, L.P. ("Quadre") from seeking duplicative discovery from NRD Partners II, L.P.'s ("NRD's") outside investors.[1]" Motion, p. 1. RTI asserts Quadre has already filed a notice of deposition of one investor (referred to as "Individual A")[2] and now Quadre has contacted RTI to coordinate the deposition of a second investor (referred to as "Individual B"). RTI asserts the deposition of Individual B would be

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[1] According to RTI, the names of NRD's investors and their representatives have been designated as confidential such that their names have been redacted from the Motion.

[2] In its response brief, Quadre asserts Individual A was ultimately deposed via videoconference, without issue, over the course of a couple of hours. *See* Respondent Quadre Investment, L.P.'s Response Brief in Opposition to Petitioner's Motion for Protective Order ("Response Brief"), p. 5.

duplicative of certain investor related discovery that has already been produced and would be duplicative of Individual A's deposition testimony. RTI contends Quadre has not articulated the need for Individual B's deposition testimony and such "third-party investor discovery [i]s, at best, a duplicative backstop" to the investor related discovery that has already been produced. Motion, p. 3.

Respondent Quadre, in turn, recounts the parties' ongoing discovery disputes, instances when the Court has had to order RTI and its affiliates to produce relevant discovery, and various instances when documents were received from non-parties that should have been contained within RTI's prior document production but were not. Quadre asserts it "must be permitted to depose non-parties who have first-hand knowledge directly relevant to this litigation." Quadre's Response Brief, p. 1. Particularly in light of the problems with RTI's production to date, Quadre asserts it should not be forced to rely on RTI's representations alone, but rather "third-party discovery is crucial to ensure [Quadre] receives all relevant evidence." Id., pp. 2-5. Further, "[t]o demonstrate that [Quadre] does not intend to act in bad faith or harass NRD or its investor, [Quadre] has voluntarily offered to limit the deposition of NRD's investors to only "Individual B"…even though NRD has many other investors with relevant information." Id., p. 5.

Having considered the entire record, the Court finds the deposition of Individual B seeks information relevant to RTI's fair value and "appears reasonably calculated to lead to the discovery of admissible evidence." O.C.G.A. §9-11-26(b)(1). Further, given the prior discovery disputes in this litigation including delays and other problems with production and given that Quadre has agreed to limit the depositions of NRD's investors to only Individual B, the Court does not find that bad faith or harassment motivates Quadre's actions or that the proposed deposition of Individual B is oppressive, prejudicial or otherwise unreasonable. Caldwell, 341 Ga. App. at 861. Accordingly, RTI's Motion is hereby DENIED.

The parties are directed to coordinate and facilitate the deposition of Individual B within thirty (30) days of this order. The deposition shall take place via videoconference unless Individual B and all affected parties consent to an in-person deposition. Except as ordered herein, all deadlines in the Court's Third Order Amending Case Management Deadlines issued on June 5, 2020 remain in effect.

SO ORDERED this 10th day of July, 2020.

/s/ John J. Goger
JOHN J. GOGER, SENIOR JUDGE
Fulton County Superior Court
Business Case Division
Atlanta Judicial Circuit

Electronically served upon registered service contacts through eFileGA

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